

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FRANCIS V. McGOWAN,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT
OF LABOR AND INDUSTRIES;
WASHINGTON STATE BOARD OF
INDUSTRIAL INSURANCE APPEALS;
AND WASHINGTON STATE ATTORNEY
GENERAL OFFICE,

Defendants.

NO. CV-05-5009-EFS

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS PLAINTIFF'S
COMPLAINT**

Before the Court, without oral argument, is Defendants' Motion to Dismiss Plaintiff's Complaint, (Ct. Rec. 5), filed March 7, 2005. After reviewing the submitted material and applicable statutory and case law, the Court is fully informed. As explained below, the Court grants Defendants' request to dismiss all claims alleged in Plaintiff's Complaint, (Ct. Rec. 1).

I. Background

On February 4, 2005, Plaintiff Mr. Francis X. McGowan filed a Complaint, alleging his rights under the Americans with Disabilities Act (ADA) and Rehabilitation Act had been violated by Defendants. *Id.* Plaintiff's allegations arise from the Defendants' denial of worker's

1 compensation benefits to Plaintiff following an alleged workplace injury.
2 *Id.* at 1-3.

3 In his Complaint, Plaintiff alleges the following facts, which are
4 undisputed by Defendants for the purpose of this motion. Plaintiff
5 reports he is a disabled individual who suffers "significant physical
6 dysfunction," including impaired walking, working, lifting, sitting, and
7 concentrating abilities. *Id.* at 1-2. Despite Plaintiff's physical
8 impairments, he was able to maintain employment with McGowan Construction
9 Services, Inc. *Id.* at 2. On January 24, 2002, while working, Plaintiff
10 allegedly suffered an "industrial injury". *Id.* On February 13, 2002,
11 Plaintiff sought medical treatment for his new injury and initiated a
12 worker's compensation claim with the Washington State Department of Labor
13 and Industries (the "Department"). *Id.* Plaintiff believes he is entitled
14 to benefits because he was injured while working and because his employer
15 had made industrial insurance payments on his behalf with the Department.
16 *Id.* at 3.

17 On March 4, 2002, the Department denied Plaintiff's claim, stating
18 his "condition was not the result of the injury alleged". *Id.* The
19 Department's denial of benefits included a refusal to pay for medical
20 treatment and other benefits relating to Plaintiff's claim. *Id.*
21 Thereafter, Plaintiff filed an appeal with the Board of Industrial
22 Appeals. *Id.* at 6. At that point, the Department reassumed jurisdiction
23 of Plaintiff's claim to reconsider its earlier denial. *Id.* Following its
24 reconsideration, the Department again denied Plaintiff's claim. *Id.* In
25 doing so, the Department stated "there was no proof of specific injury
26 at a definite time and place in the course of employment" and that

1 Plaintiff's "condition [was] no[t] the result of a[n] industrial injury
2 as defined by the Industrial Insurance Law" *Id.* In June 2004,
3 Plaintiff notified the Washington State Attorney General that, if
4 Defendants did not grant him benefits, he would seek relief in federal
5 court. *Id.* at 9. However, on October 4, 2004, the Department's decision
6 was affirmed. *Id.* at 7-8. The Board of Industrial Insurance Appeals
7 found Plaintiff had failed to establish a prima facie case that he was
8 entitled to workers compensation benefits. *Id.*

9 Following the State's final denial of worker's compensation
10 benefits, Plaintiff sought relief in federal court with the filing of his
11 February 4, 2005 Complaint, (Ct. Rec. 1). Plaintiff's Complaint alleged
12 violations of the ADA and Rehabilitation Act by Defendants Washington
13 State Department of Labor and Industries, Washington State Board of
14 Industrial Insurance Appeals, and the Washington State Attorney General's
15 Office. *Id.*

16 **II. Defendants' Motion to Dismiss**

17 In their Motion to Dismiss Plaintiff's Complaint, (Ct. Rec. 5),
18 Defendants ask the Court to dismiss Plaintiff's Complaint in its entirety
19 based on their beliefs (1) the Complaint fails to state a claim upon
20 which relief can be granted and (2) Defendants are immune from suit in
21 federal court pursuant to the Eleventh Amendment of the United States
22 Constitution, (Ct. Rec. 5). Both legal theories are separately addressed
23 and ruled on below.

24 **A. Failure to State a Claim Upon Which Relief Can Be Granted**

25 Under Federal Rule of Civil Procedure 12(b)(6), a cause of action
26 should not be dismissed for failure to state a claim "unless it appears

beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Cal. Dump Truck Owners Assoc. v. Assoc. Gen. Contractors of Am.*, 562 F.2d 607, 614 (9th Cir. 1977) (citing *Conley v. Gibson*, 355 U.S. 41, 45 (1957)); *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984). When resolving a Rule 12(b)(6) motion, the court must (1) construe the complaint in the light most favorable to the plaintiff, (2) accept all well-pleaded factual allegations as true, and (3) determine whether plaintiffs could prove any set of facts to support a claim that would merit relief. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996); *Integrated Res. Equity Corp. v. Founders Bank of Ariz.*, 74 F.3d 1246 (9th Cir. 1996). A claim should be dismissed where there is a "lack of cognizable legal theory" or "absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Defendants seek a Rule 12(b)(6) dismissal of Plaintiff's ADA and Rehabilitation Act claims based on a theory that the facts pled in Plaintiff's Complaint "fail to establish that he is entitled to any relief under the ADA or Rehabilitation Act[,]" (Ct. Rec. 6 at 4). Defendants assert Plaintiff "is aggrieved because the State is not providing worker's compensation benefits for an injury that pre-dates his coverage by industrial insurance." *Id.* at 6. Accordingly, Defendants argue that Plaintiff's Complaint is insufficient to maintain a lawsuit under the ADA or Rehabilitation Act because the statutes are intended to challenge disability-related discriminatory practices, not to challenge the adequacy of coverage provided by state programs. *Id.* at 5.

1 Defendants correctly point out that the ADA and Rehabilitation Act
2 were intended to eliminate discrimination on the basis of disability and
3 that they do not provide a cause of action to challenge the adequacy of
4 state programs. *See Doe v. Pfrommer*, 148 F.3d 73 (2nd Cir. 1998). For
5 this reason, the Court agrees with Defendants that Plaintiff's ADA and
6 Rehabilitation claims must be dismissed. Plaintiff is merely challenging
7 the "adequacy of the programs/services being offered," which clearly is
8 not a "cognizable legal theory." Thus, Plaintiff has set forth
9 insufficient grounds to maintain claims under the ADA and Rehabilitation
10 Act, and those claims must be dismissed. In other words, Plaintiff may
11 not recover damages under the ADA or Rehabilitation Act from the
12 Department because it determined the injuries Plaintiff claims to suffer
13 from were not the result of a workplace accident, but rather the
14 consequence of a pre-existing disability.

15 **B. Eleventh Amendment Immunity**

16 The Eleven Amendment to the United States Constitution bars citizens
17 from bringing suit against their States in federal Court. *Welch v. Tex.*
18 *Dep't of Highways and Pub. Trans.*, 483 U.S. 468, 472 (1987). Only two
19 exceptions to Eleventh Amendment immunity are recognized. *Id.* at 473-74.
20 First, a State may independently waive immunity and allow its citizens
21 to file suit against it in federal court. However, Courts recognize
22 State waivers "only where stated 'by the most express language or by such
23 overwhelming implications form the text as [will] leave no room for any
24 other reasonable construction.'" *Id.* at 472 (quoting *Edelman v. Jordan*,
25 415 U.S. 651 (1974)). Alternatively, Eleventh Amendment immunity may be
26 abrogated by Congress when it acts pursuant to its power "'to enforce,

1 by appropriate legislation' the substantive provisions of the Fourteenth
2 Amendment." *Id.* at 474 (quoting *Fitzpatrick v. Bitzer*, 427 U.S. 445, 456
3 (1976)). When it does abrogate the Eleventh Amendment, Congress must
4 make its intention to do so in "unmistakable language in the statute
5 itself." *Id.* (quoting *Atascadero State Hosp. v. Scalon*, 473 U.S. 234, 243
6 (1985)).

7 Defendants invoke the Eleventh Amendment in hope of having all
8 claims asserted in Plaintiff's Complaint, aside from those brought under
9 the ADA and Rehabilitation Act, dismissed. Although Plaintiff only
10 expressly asserts claims under the ADA and Rehabilitation Act, Defendants
11 point out that additional factual allegations are scattered throughout
12 Plaintiff's Complaint for which no corresponding causes of action are
13 listed. Defendant asks the Court to dismiss any and all other causes of
14 action that may be tied to those claims, because Washington State has not
15 consented to these actions and they have not been expressly authorized
16 by Congress.

17 In his opposition, although not indicating he was alleging any
18 claims other than those under the ADA and Rehabilitation Act, Plaintiff
19 argues that Defendants are not immune under the Eleven Amendment because
20 he is seeking injunctive and declaratory relief, (Ct. Rec. 10 at 9).
21 According to Plaintiff, under the Doctrine of *Ex Parte Young*, 209 U.S.
22 123 (1908), Eleventh Amendment immunity does not extend to federal suits
23 against state officials when only injunctive and declaratory relief is
24 sought. The Court need not address Plaintiff's argument however. This
25 is because, contrary to Plaintiff's assertion, he is not seeking
26 injunctive and declaratory relief. Plaintiff's Complaint clearly shows

1 he is only seeking monetary damages, (Ct. Rec. 1 at 11-12). Plaintiff
2 asks the Court to order Defendants to pay "out of pocket" expenses, legal
3 fees and costs, medical expenses, "loss of income," "damage to property
4 rights," and various other monetary damages. For this reason,
5 Plaintiff's *Ex Parte Young* argument is moot and need not be considered
6 any further.

7 Accordingly, because Plaintiff has not stated he is suing pursuant
8 to any statutes other than the ADA or Rehabilitation Act and no support
9 has been presented to warrant a finding that any claims, other than the
10 ADA and Rehabilitation Act claims, survive Defendants' Eleventh Amendment
11 immunity, the Court dismisses all other claims that may have been alleged
12 in Plaintiff's complaint without prejudice.

13 For the reasons given above, **IT IS HEREBY ORDERED:** Defendants'
14 Motion to Dismiss Plaintiff's Complaint, (Ct. Rec. 5), is **GRANTED. All**
15 **claims are dismissed without prejudice.**

16 **IT IS SO ORDERED.** The District Court Executive is directed to

17 (A) Enter this Order,

18 (B) Provide a copy to all counsel,

19 (C) Enter judgment according to this order, and

20 (D) **CLOSE THIS FILE.**

21 **DATED** this 16th day of June, 2005.

23 S/ Edward F. Shea

24 EDWARD F. SHEA

United States District Judge

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